

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3086
Administrative Law Judge Division
April 22, 2002

R E S O L U T I O N

RESOLUTION ALJ 176-3086. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

WESLEY M. FRANKLIN
Executive Director

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3086 (4/22/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-03-052 NETWOLVES ACQUISITIONS, INC., NETWOLVES CORPORATION, NORSTAN NETWORK SERVICES, INC., for Approval of a Change of Ownership	Ratesetting	Ratesetting	NO
A02-03-055 PACIFIC GAS AND ELECTRIC COMPANY (U 39 M), for Expedited Approval under Public Utilities Code Section 851 to grant easements to the Placer County Department of Public Works to allow widening of Bell Road	Ratesetting	Ratesetting	NO
A02-03-056 MAMMOTH MOUNTAIN SKI AREA, for authority to operate as a Scheduled Passenger Stage Corporation between Mammoth Lakes and Yosemite Valley	Ratesetting	Ratesetting	NO
A02-03-057 ACCUTEL OF TEXAS, INC., dba 1-800-4-A-PHONE, for a Certificate of Public Convenience and Necessity to Offer Limited Facilities-Based Local Exchange, Access and Interexchange Services	Ratesetting	Ratesetting	NO
A02-03-058 PACIFIC GAS AND ELECTRIC COMPANY, VENGE VINEYARDS, LLC, Joint, for an Order Authorizing Pacific Gas and Electric Company, a California corporation, to Sell and Convey to Venge Vineyards, LLC, a California Limited Liability Company, a certain parcel of Land in Napa County pursuant to Public Utilities Code Section 851	Ratesetting	Ratesetting	NO
A02-03-061 SOUTHERN CALIFORNIA GAS COMPANY (U 904-G), for Authority to Offer a New Service at Tariffed Rates, Terms, and Conditions allowing Carriers to Place Fiber Optic Cable in Gas Pipelines	Ratesetting	Ratesetting	YES
A02-03-062 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-G), for Authority to Offer a New Service at Tariffed Rates, Terms, and Conditions allowing Carriers to Place Fiber Optic Cable in Gas Pipelines	Ratesetting	Ratesetting	YES
A02-03-063 HANDS ON SIGN LANGUAGE SERVICES, INC., for a Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Interexchange Services and Competitive Local Exchange Services as a Reseller	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-03-064 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-E) for Authority to Sell Certain Real Property in San Diego, California to Lankford & Associates, Inc., general partner of Broadway Tower 655, LLC	Ratesetting	Ratesetting	NO
A02-04-001 SOUTHERN CALIFORNIA WATER COMPANY, for a Certificate of Public Convenience and Necessity pursuant to Public Utilities Code Section 1001 to construct an 8.4 MW natural gas-fueled generator facility in its bear Valley Electric Service Division	Ratesetting	Ratesetting	YES
A02-04-002 COUNTY OF LOS ANGELES, of Resolution E-3757	*	*	*
A02-04-007 PACIFIC GAS AND ELECTRIC COMPANY, (U 39-M) for an Expedited Order Confirming that it may enter into an Agreement for Installation, Maintenance and Use of a Removable Floating Boat Dock on its property under General Order 69-C or, in the alternative, for approval under Public Utilities Code Section 851	Ratesetting	Ratesetting	NO
A02-04-009 ANGEL ISLAND - TIBURON FERRY, INC., for authorization to Increase passenger fares for the transportation of passengers between Tiburon and Angel Island	Ratesetting	Ratesetting	NO
A02-04-010 WORLD WIDE COMMUNICATIONS, for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013 and D97-06-107	NDIEC Registration Application	Ratesetting	NO
A02-04-011 FEREIDOUNI, MAHNAZ, FRAYDOUNI, NASSER, XIE, XIN, Joint Application of Xin Xie, for Authority to acquire control and of Nasser Fraydouni and Mahnaz Fereidouni to transfer control of Advanced Airporter, Inc. pursuant to Section 854 Public Utilities Code	Ratesetting	Ratesetting	NO

* Application for Rehearing of Resolution is assigned to Legal Division. Categorization/Need for Hearing will be addressed as necessary if the Commission subsequently grants rehearing.

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3086 (4/22/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-04-012 SACRAMENTO TRANSPORTATION SYSTEMS, INC., for authority under Section 1031 et seq., of the Public Utilities Code to operate on-call, door-to-door, passenger stage between Sacramento International Airport, on the one hand, and various points in the counties described in the Application, on the other hand; and to establish a Zone of Rate Freedom under Section 454.2 et seq., of the Public Utilities Code	Ratesetting	Ratesetting	NO
A02-04-013 ABDISAMAD DERIA, CONSTANTINO FOURNIOTIS, dba ACROPOLIS AIRPORT SHUTTLE, to Transfer his PSC-12903 to Abdisamad Deria	Ratesetting	Ratesetting	NO
A02-04-014 MPOWER COMMUNICATIONS CORP., (U 5859-C), for Approval of a Transaction pursuant to Public Utilities Code Section 854	Ratesetting	Ratesetting	NO
A02-04-015 PACIFIC GAS AND ELECTRIC COMPANY, (U 39-M) for Expedited Approval under Public Utilities Code Section 851 to Grant Easements to the City of Santa Rosa for Construction, Operations and Maintenance of a Bicycle and Pedestrian Path and Bridge and related Public Park Uses on PG&E Land	Ratesetting	Ratesetting	NO
A02-04-016 FARIBORZ ALISHAHI, dba ORANGE COUNTY CRUISER, AIRPORT SHUTTLE, for authority to operate as a Passenger Stage between points within the County of Orange, on the one hand, and the John Wayne Airport, on the other hand	Ratesetting	Ratesetting	NO
A02-04-017 STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, for an order authorizing it to construct a new Overhead ("Mococo") on I-680, and two new at grade crossings with Concrete panels on Mococo Road at the Rhodia Spur Tracks in the City of Martinez, County of Contra Costa	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-04-018 INTERNATIONAL TELECOM EXCHANGE, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-04-019 KIGER TELEPHONE & TELEPHONY, LLC, for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013 and D.97-06-107	NDIEC Registration Application	Ratesetting	NO
A02-04-021 TELESPAN COMMUNICATIONS, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-04-022 CALIFORNIA-AMERICAN WATER COMPANY, (U 210 W) for an order authorizing it to increase rates for water service in its Monterey Division to increase revenues by \$5,725,300 or by 22.47% in the year 2003; by \$1,772,100 or 6.94% in the year 2004; and by \$996,500 or 3.02% in the year 2005	Ratesetting	Ratesetting	YES